

Document #4573

4/4/85

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OPERATIONS, MAINTENANCE AND SECURITY PLAN

GOVERNMENT CENTER GARAGE

Interim Plan

This Operations, Maintenance and Security Plan (the "Plan") is agreed upon among the City of Boston acting by and through its Public Facilities Commission (the "City"), The Boston Redevelopment Authority (the "Authority") and Myrna Putziger and Richard H. Rubin as they are Trustees of the Government Center Garage Realty Trust (the "Developer") pursuant to and in accordance with a Sale and Construction Agreement dated December 21, 1983 among the City, the Authority and the Developer (the "Sale and Construction Agreement") which is recorded with Suffolk Registry of Deeds at Book 10700, Page 87. Said Sale and Construction Agreement is hereby amended by incorporating this Plan as a part thereof. Capitalized terms used herein without definition shall have the meanings ascribed in the Sale and Construction Agreement.

This Plan is an interim Plan to be further supplemented by the addition hereto, by amendment, of additional material relating to operations, maintenance and security.

Based upon the design development for the Improvements approved in accordance with the Sale and Construction Agreement, the Property will contain 2,098 parking spaces for standard-sized automobiles to be devoted to public parking use. Section 301 of the Sale and Construction Agreement required the Developer to "devote the Property to public parking use with not less than 1,865 parking spaces for standard-sized automobiles, in accordance with an Operation, Maintenance and Security Plan to be agreed upon by the parties and recorded as an amendment hereto...." For purposes of the Sale and Construction Agreement, it is necessary to reaffirm that certain spaces rented to persons outside of the Improvements may still properly be classified as public parking spaces.

Accordingly, the Developer may enter into formal or informal agreements, for a short or long term, pursuant to which Developer or lessee-operator of the garage assures the availability of 200

parking spaces to tenants of, employees in, or visitors to the building known as the John F. Kennedy Federal Office Building, Boston, Massachusetts, which is currently owned by the United States of America acting through its General Services Administration, or any designee of the owner thereof from time to time, of which 50 spaces may be specifically assigned.

In addition, and consistent with the classification of parking spaces of the Air Pollution Control Commission, 208 spaces may be utilized by tenants of, employees in, and visitors to the Property, including the office and retail space, provided such number does not exceed 208 spaces and provided that the Developer has obtained an exemption from the parking freeze from the Boston Air Pollution Control Commission for such parking spaces.

Further for the purpose of the Sale and Construction Agreement, a parking space shall be considered for "standard-sized automobiles" if the stall dimensions thereof shall be consistent with the parking space stall size recommended from time to time for low turnover usage by a recognized traffic industry authority such as the Institute of Traffic Engineers or the Urban Land Institute, provided that such standard has been accepted in writing by the Director of the Authority.

In witness whereof, the parties hereto have caused this Plan to be signed, sealed and delivered this _____ day of _____, 1985 by their duly authorized representatives, respectively.

Approved as to form:

CITY OF BOSTON acting by and
through its PUBLIC FACILITIES
COMMISSION

Chief General Counsel
Boston Redevelopment Authority

By: _____
Director
Public Facilities Commission

[signatures continued on following page]

BOSTON REDEVELOPMENT AUTHORITY

By: Stephen F. Coyle, Director

GOVERNMENT CENTER GARAGE REALTY TRUST

By: Richard H. Rubin, Trustee
as aforesaid and not
individually, without
personal liability

By: Myrna Putziger, Trustee
as aforesaid and not
individually, without
personal liability

Signed, sealed, and delivered
in the presence of:

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk , 1985

Then personally appeared the above-named _____, Director of the Public Facilities Commission, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of the City of Boston, before me

NOTARY PUBLIC

My Commission expires: _____

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk , 1985

Then personally appeared the above-named Stephen F. Coyle, Director of the Boston Redevelopment Authority, who executed the foregoing instrument on behalf of the Boston Redevelopment Authority and acknowledged the same to be the free act and deed of said Authority, before me

NOTARY PUBLIC

My Commission expires: _____

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk , 1985

Then personally appeared the above-named Myrna Putziger and Richard H. Rubin as they are Trustees of the Government Center Garage Realty Trust, and acknowledged the foregoing instrument to be their free act and deed, as Trustees of the Government Center Garage Realty Trust, before me

NOTARY PUBLIC

My Commission expires: _____

Lease No. _____

SETTLEMENT AGREEMENT AND PARKING SPACE RENTAL AGREEMENT

This Settlement Agreement and Parking Space Rental Agreement made this _____ day of _____, 1984, by and among Richard H. Rubin and Myrna Putziger as they are trustees of Government Center Garage Realty Trust under declaration of trust dated November 1, 1983, recorded with Suffolk Registry of Deeds at Book 10615, Page 65 (hereinafter referred to as "the Trustees") and the United States of America acting through its General Services Administration (hereinafter "GSA").

WHEREAS, the Trustees have purchased from the City of Boston the Government Center Garage, so-called (hereinafter the "Garage"), located within the Government Center Urban Renewal Area in the City of Boston; and

WHEREAS, pursuant to the terms of such purchase the Trustees intend to construct an addition to the said Garage consisting primarily of space to be devoted to office uses, all as more particularly described in a Sale and Construction Agreement between the Trustees, the City of Boston and the Boston Redevelopment Authority dated December 21, 1983, recorded with Suffolk Registry of Deeds at Book 10700, Page 87 (the "Sale and Construction Agreement"); and

WHEREAS, the Trustees have entered into a long term lease for the operation of said Garage with Kinney System of Sudbury St., Inc. (the "lessee-operator") dated as of November 1, 1983, notice of which lease is recorded with Suffolk Registry of Deeds at Book 10700, Page 177 (the "Garage Lease").

WHEREAS, GSA is the owner of The John Fitzgerald Kennedy Federal Office Building located within the said Urban Renewal Area of the City of Boston; and

WHEREAS, GSA has brought a civil action against the Trustees and others in the United States District Court for the District of Massachusetts entitled United States of America v. Boston Redevelopment Authority, et alii, Civil Action No. 83-4217-K, seeking to prevent the construction by the Trustees of the proposed addition to the said Garage; and

WHEREAS, the parties desire to settle their differences and terminate the litigation referred to above;

NOW, THEREFORE, the parties agree as follows:

1. The Trustees agree to rent to GSA two hundred (200) automobile parking spaces, or such lesser number as GSA may from time to time designate in accordance with this Agreement, within the Garage on the terms and in the manner hereinafter set forth. The number of parking spaces rented to GSA pursuant to and in accordance with this Agreement for each federal fiscal year

(October 1 to September 30), or portion thereof, during the term hereof shall be established by notice from GSA to the Trustees and the lessee-operator given in writing on or before September 15th in each year, which notice shall specify the number of parking spaces, up to two hundred (200), which GSA desires to rent hereunder during the following federal fiscal year. The number of spaces rented hereunder for the period commencing as described in paragraph 6 hereof and ending at the end of the federal fiscal year during which such period commences shall be _____ parking spaces. Notwithstanding such annual designation, GSA may from time to time reduce, but not increase, the number of spaces rented hereunder for the balance of any such fiscal year by written notice to the Trustees and the lessee-operator given on or before the 15th day of any month, such notice to be effective as of the first day of the following month through the end of the fiscal year.

2. GSA shall be entitled, for the term of this Agreement, to up to such two hundred (200) spaces either for its use or for that of any federal agency designated by GSA, provided that (1) any such use is lawful and complies with regulations established from time to time for the operation of the said Garage by the said lessee-operator or with any applicable regulations or restrictions now or thereafter imposed upon the operation of the

Garage by any governmental authority having jurisdiction, and (2) GSA shall not be permitted to request or accept any profit, fee, premium or excess charge for the use of any such space or spaces above the amounts charged to GSA by the lessee-operator of the said Garage; provided, however, that such limitation upon fees and charges shall not prevent GSA from charging any other agency or department of the federal government for the use of any such space such Standard Level User Charge for parking as is applied generally by GSA from time to time to all such inter-agency parking transactions. Upon written request of the lessee-operator, and within thirty (30) days thereof, GSA shall provide lessee-operator with a statement, certified as true and correct by the Regional Administrator of GSA, that neither GSA nor any designee of GSA has requested or accepted any such profit, fee, premium or excess charge for the use of any such space or spaces.

3. A number of parking spaces equal to the number annually designated by GSA as set forth herein shall be reserved by the lessee-operator for the use of GSA and its designees. The first fifty (50) of such spaces shall be identified spaces set aside for the use of GSA or its designees, which spaces shall be in such locations as may be determined from time to time by lessee-operator; provided that such spaces shall be in no more than

three locations and within such locations shall be contiguous. Procedures for restricting access to such identified spaces shall be as established by lessee-operator from time to time, the cost of which shall not be incurred by lessee-operator. With respect to all spaces in excess of fifty annually designated by GSA, no specific, identified parking spaces shall be set aside for such purposes, but assurance of the availability at all times of sufficient parking spaces within the Garage for GSA and its designees shall be provided by the lessee-operator by the adoption of an operating procedure for the Garage designed to monitor the inventory of spaces available in the Garage. The operating procedure annexed hereto as Exhibit 1 is approved by all parties hereto and shall not be modified without the consent of GSA, which consent shall not be unreasonably withheld. If, notwithstanding the adherence by lessee-operator to such operating procedure, GSA or its designee shall attempt to make use of one of the unassigned spaces rented hereunder but shall be unable, after careful search of the entire Garage, no less diligent than is customary for a member of the public at large searching for a parking space, to find an available space, the following procedures shall apply:

- a. The vehicle operator shall, in person, notify the Garage manager, or such person as lessee-operator shall designate, of the unavailability of space and establish his or her identity as the driver of a GSA vehicle or that of a GSA designee;
- b. The lessee-operator may offer to accept the vehicle, in which case such operator shall leave the vehicle with or as instructed by lessee-operator;

c. If the lessee-operator shall fail to accept such vehicle as aforesaid, the lessee-operator shall give such operator a written acknowledgement that the vehicle has been turned away. GSA or its designee may make written request for reimbursement of the amount actually paid to park such vehicle elsewhere, for up to a twenty-four (24) hour period, upon presentation of (i) the "turn away" acknowledgement issued by lessee-operator and (ii) a receipt indicating the place the vehicle was parked, the time period parked, and the fee charged for such parking;

d. If such unavailability of spaces to GSA or its designee shall occur more frequently than three (3) times in any calendar month, lessee-operator shall make adjustment in the computer program utilized to monitor entry to and egress from the Garage, as described in Exhibit 1, to provide a greater margin of spaces for GSA and its designees;

e. Notwithstanding the provisions set forth in subparagraph 3b and 3c above, lessee-operator, at its sole option and in order to accommodate all vehicles designated by the GSA, or its designee, for the current fiscal year, may require the vehicle operator to park his or her vehicle in parking spaces designated by lessee-operator over and above the first fifty (50) spaces designated pursuant to this paragraph 3, up to an additional one hundred fifty (150) parking spaces, in which event, subparagraphs 3a, 3b, 3c and 3d shall no longer apply (as regards the vehicles using the designated spaces), until lessee-operator shall send at least ten (10) days written notice to GSA that said additional designated spaces are no longer so designated.

4. The parking spaces rented hereunder shall be available to GSA and its designees during the regular operating hours of the Garage during which it is open for the use of the general public. GSA or its designees shall pay the lessee-operator of the Garage

on a monthly basis for the use of the spaces hereby rented. Payment shall be made on or before the first day of the month next succeeding the month for which payment is made. The rent shall be the rate charged by the lessee-operator to the general public, on a monthly basis (or otherwise), provided that GSA or its designees shall pay for the use of such spaces on the most advantageous rate basis and at the lowest such rate as is offered by the lessee-operator from time to time to any person or entity to whom ten or more parking spaces in the Garage are provided on a comparable basis (such comparability to be determined with reference to permitted hours of use, rights of entry and exit, and assurance of space availability). Nothing herein shall be construed to require the establishment by the lessee-operator of any specific periodic rate or method of charging for the use of the spaces rented hereunder; provided, however, that if lessee-operator shall cease to establish for the general public any periodic rate for a period longer than one day, lessee-operator shall nevertheless establish for GSA a monthly rate equal to the product of 13 times the maximum daily rate in effect from time to time. Upon written request of GSA, and within thirty (30) days thereof, the lessee-operator shall provide GSA with a statement

of all rates charged to all customers of the Garage in effect as of the date of such request, and shall certify the same as true and accurate.

5. Except as otherwise provided in this Agreement, the methods of identifying those eligible to use the parking spaces rented hereunder, of assuring the availability of parking spaces for the use of GSA and its designees, and of administering the implementation of this Agreement, shall be determined in the discretion of the lessee-operator of the Garage in conformity with its usual business practices, to the extent that such practices do not violate or contravene the express provisions of this Agreement, and with the intent of this Agreement, GSA and its designees agreeing by their monthly or other payment to abide by the business practices used by the lessee-operator insofar as the same shall not be contrary to law or regulation. Without limiting the generality of the foregoing, the continuation of GSA's or its designees' rights hereunder with respect to each space rented hereunder shall be conditioned upon payment by GSA or its designees of the amounts owing therefore in accordance with the terms of paragraph 3 of this Agreement; provided that in the event that GSA or any of its designees shall fail to make any payment in a timely manner, the lessee-operator shall notify GSA of such failure and GSA shall have the opportunity to make

payment on its own or its designee's behalf within thirty (30) days of such notice, provided that nothing herein shall be construed as obligating GSA to pay any amount owed by any of its designees.

6. All of the rights of GSA under this Agreement, including, without limitation, the right to the use of the parking spaces rented to it hereunder, shall not commence or otherwise come into existence unless and until the later to occur of (i) commencement of construction of such office addition by the Trustees or (ii) the Trustees having obtained, from each and every relevant public authority or governmental body, each and every permission, license or approval necessary for the construction of the addition to the said Garage, including, without limitation, the permissions, licenses and approvals recited in the Sale and Construction Agreement, and those further such permissions and approvals set forth on Exhibit 2 attached hereto and (1) any time period within which to file or otherwise institute any appeal, opposition or challenge from or to the granting of any such permission, license or approval has expired and no such appeal, opposition or challenge has been filed, or (2) if any such appeal, opposition or challenge has been filed, the same has been finally determined favorably to the Trustees and any hindrance to the commencement or completion of the said addition has been

removed. Without limiting the generality of the foregoing, commencement of construction by the Trustees of any portion of such addition or any other improvements defined in the Sale and Construction Agreement prior to the receipt of all such permissions, licenses and approvals, or the expiration of such appeal periods or favorable disposition of any such appeal shall not accelerate the commencement or existence of rights of GSA hereunder nor be construed as a satisfaction of the pre-conditions set forth herein.

7. This Agreement shall terminate on May 25, 2004.

8. The lessee-operator has, by the signature of its duly authorized officer, assented to the terms of this Agreement and agrees that the provisions hereof concerning the spaces rented to GSA shall be binding upon lessee-operator with the same effect as if such provisions had been fully set forth in the Garage Lease, subject to the obligations set forth herein for payment, notice, and adherence by GSA to regulations for the Garage.

9. Simultaneously with the execution and delivery of this Agreement, the parties, together with the other parties to the litigation referred to above, have executed and delivered a stipulation of dismissal with prejudice and mutual releases, and the parties agree that they have thereby relinquished and released all claims against one another except those claims

arising under the terms of this Agreement. GSA further agrees that it will not, directly or indirectly, participate in any appeal, opposition or challenge to the granting of any permission, license or approval necessary for the construction of the addition to said Garage and that they shall retract or dismiss any such appeal, opposition or challenge heretofore made or asserted with any governmental authority for the purpose of preventing, delaying or revoking the issuance of any such permit, license or approval.

10. This Agreement, together with the stipulation of dismissal and mutual releases by and between the parties hereto referred to in Paragraph 9 hereof, and a certain Height Limit Covenant by and between the parties, dated as of the date hereof, constitutes the entire agreement between the parties and is entered into freely and voluntarily by them after and upon advice of counsel who concur that the agreement herein together with such stipulation, releases, and covenant is the complete and entire agreement. All executed copies are duplicate originals and are equally admissible in evidence.

11. Any notice required or desired to be given pursuant to this Agreement shall be in writing and shall be given by depositing the same in the United States Mail, postage prepaid,

certified or registered mail, to the addresses of the respective parties set forth below:

If to the Trustee:

Richard H. Rubin, Trustee
Government Center Garage Realty Trust
c/o Richard H. Rubin Companies
11140 Rockville Pike
Rockville, Maryland 20852

If to GSA:

Government Services Administration
J.W. McCormack Post Office and Courthouse
Boston, Massachusetts 02109

If to lessee-operator:

Kinney System of Sudbury St., Inc.
60 Madison Avenue
New York, New York 10010
Attn: President

Any of the foregoing persons may change its respective address by giving written notice to the other in accordance with the provisions of this paragraph.

12. The use of the words "rent" or "rented" herein with respect to parking spaces in the Garage is not intended to create, and shall not create, any rights or interest in GSA or any designee other than those rights specifically set forth herein, nor create any rights in real property other than a license to use parking spaces, which license may be revoked pursuant to the terms of this Agreement. Without limiting the generality of the foregoing, no implied covenants of any nature are made herein by the Trustees or the lessee-operator.

13. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts to the extent applicable to the parties hereto and shall be binding upon and extend to the benefit of the parties, their heirs, successors and assigns. This Agreement may only be amended by a writing executed by the parties hereto and assented to by the lessee-operator.

It witness whereof, the parties have executed these presents on the date first above written.

Richard H. Rubin as Trustee of
Government Center Garage Realty
Trust and not individually

Myrna Putziger as Trustee of
Government Center Garage Realty
Trust and not individually

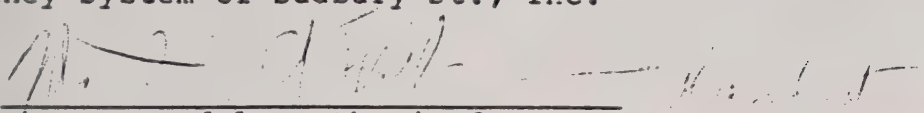
United States of America acting
through its General Services
Administration

By: _____

[Signatures continued on next page]

Assented to:

Kinney System of Sudbury St., Inc.

By: 

hereunto duly authorized

The Boston Redevelopment Authority, for itself and on behalf of the City of Boston acting by and through its Public Facilities Commission pursuant to Section 906 of the Sale and Construction Agreement, hereby consents to and approves the terms and provisions of the foregoing Settlement Agreement and Parking Space Rental Agreement.

Boston Redevelopment Authority

By: _____

Director

Dated: _____

Exhibit 1

GOVERNMENT CENTER GARAGE OPERATING PROCEDURE

Kinney System of Sudbury St., Inc. guarantees that sufficient space to meet our obligations to provide nondesignated spaces for our monthly customers will be reserved and available at the Government Center Garage. Our commitment will be monitored and administered by placing the following system into effect:

1. In order to differentiate the numbers of monthly parking customers from daily parking customers at Government Center Garage, we propose to operate a system whereby the entry and exit of daily and monthly customers will be monitored. Daily customers will obtain a numerically sequenced ticket from a ticket dispensing machine operating in an entry lane. Monthly customers will enter the garage by inserting a magnetically code key card into an appropriate slot. The computer monitoring such gate will read and verify the validity of the card. Upon such verification the automatic control equipment will raise a gate and permit the entry of the monthly parking customer into the garage. When such occurrence happens, the computerized counter will indicate such fact on the perpetual inventory of parking spaces which will be maintained on the overall computer control. Similarly, when an automobile exits the garage, the gate through which such customer will exit, be it monthly or daily, will record such fact on the perpetual inventory control equipment. As a result of controlling the separate number of monthly customers and daily customers who have entered and exited from the garage there will be displayed, at all times, in the garage office, the relevant totals of:

Total garage capacity less net reserve to meet monthly parking requirements and therefore such computer will indicate the net available parking spaces available in the garage as a total number.

The computer shall prevent reuse of any magnetic card until such time as a vehicle exits the Garage utilizing the same magnetic card.

2. The benefit of such system is to at all times reserve a sufficient number of parking spaces to meet the requirements of monthly parking contracts. Whenever the number of parking spaces in the garage falls below such figure as is necessary to meet the obligations to monthly parking customers a "full" sign at the entrance to the garage will be activated.

Exhibit 2

1. An amendment to the permit for the storage of flammables for the garage issued pursuant to Mass. G. L. c. 148, Section 13 will be necessary for any automobiles in excess of 1865 parked in the garage and a permit under said Chapter 148 for the storage of diesel fuel to power any emergency generator into the garage or such addition as defined in the Sale and Construction Agreement.

2. Issuance of a building permit by the Inspectional Services Department of the City of Boston.

MEMORANDUM

APRIL 4, 1985

TO: BOSTON REDEVELOPMENT AUTHORITY AND
STEPHEN COYLE, DIRECTOR

FROM: PAUL L. McCANN
EXECUTIVE ASSISTANT TO THE DIRECTOR

SUBJECT: GOVERNMENT CENTER GARAGE, FINALIZATION OF SETTLEMENT
WITH GENERAL SERVICES ADMINISTRATION

Last summer the Authority authorized the execution of an Operations, Maintenance and Security Plan for the Government Center Garage. Such Plan was authorized in contemplation of a settlement of all of the various law suits which had been initiated challenging the Authority's plan to further develop the Government Center Garage by the addition of offices and retail space and additional parking. At that time it was contemplated that 260 parking spaces would be made available to the Plaintiffs in those suits in settlement of the claims asserted. In the interval since that prior Board vote, documentation has been completed to settle the claim made by the General Services Administration. The claims asserted by two other Plaintiffs have not been settled. Those claims have been fully litigated in a trial in the Land Court in early January. A decision on the merits will be rendered at some future date.

In its prior authorization of the Operations, Maintenance and Security Plan, the Board permitted up to 260 unassigned parking spaces to be utilized to settle litigation. In light of the foregoing status of litigation, the Board is now requested to modify the previously approved plan to authorize the utilization of 200 parking spaces, of which 50 spaces may be assigned spaces, to settle such litigation.

Submitted with this memorandum is the settlement agreement with the General Services Administration which has been executed by the owner of the Garage and its Lessee-Operator. Authorization is sought for the Director to execute and deliver this Settlement Agreement on behalf of the Authority.

Votes implementing the foregoing are attached.

VOTED: That the Director be, and hereby is, authorized to execute and deliver on behalf of the Authority, in its own right and as a delegatee of the City of Boston, acting by and through its Public Facilities Commission (The "City"), an Operations, Maintenance and Security Plan for the Government Center Garage substantially in the form presented to this meeting, with such changes therein as the Director, in his sole discretion, deems appropriate; such plan to become a part, by amendment, of the Sale and Construction Agreement dated December 21, 1983 among the Authority, the City and the Trustees of Government Center Garage Realty Trust; and further

VOTED: That the Director be, and hereby is, authorized to execute and deliver on behalf of the Authority and the Public Facilities Commission, in each case as a consenting party, a Settlement Agreement and Parking Space Rental Agreement between the Trustees of Government Center Garage Realty Trust and the the United States of America acting through its General Services Administration, substantially in the form presented to this meeting, with such changes therein as the Director, in his sole discretion, deems appropriate.

